

May 12, 2005

Becky Bailey-Findley  
Orange County Fair &  
Exposition Center  
32<sup>nd</sup> District Agricultural Association  
88 Fair Drive  
Costa Mesa, CA 92626

**Re: Your Request for Advice  
Our File No. A-05-066**

Dear Ms. Bailey:

This letter is in response to your request on behalf of the 32<sup>nd</sup> District Agricultural Association (the “Association”), for advice regarding the conflict-of-interest code provisions of the Political Reform Act (the “Act”).<sup>1</sup>

### **QUESTION**

If the Association amends its investment policy to allow expansion of investment alternatives, would the board members and senior staff be public officials who manage public investments as used in Government Code section 87200?

### **CONCLUSION**

Yes. The members of the Association’s board of directors and certain senior staff members are subject to the disclosure provisions of section 87200. This conclusion applies regardless of whether or not the Association amends its existing investment policy.

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<sup>1</sup> Government Code sections 81000 – 91014. Commission regulations appear at Title 2, sections 18109-18997, of the California Code of Regulations.

## **FACTS**

The Association is responsible for operating the fairgrounds in Orange County and producing the county fair, among other events.

The Association is considering changes to its investment policy. Presently, all funds exceeding short-term operational needs are deposited with the local agency investment fund. The Association is considering expanding its investment options to include other choices allowed under Government Code section 16430. These investments could include many choices such as bonds, notes, and obligations of governmental entities, agencies, and districts; commercial paper; bankers acceptances; certificates of deposit; and corporate bonds, debentures, and notes.

Under the new policy, the Association senior staff, acting on the direction of the board of directors, would recommend and select between these investment options and would execute the investment of funds.

## **ANALYSIS**

Section 87200 of the Act lists those officials, including “other public officials who manage public investments,” who are subject to the disclosure requirements of Article 2, Chapter 7 of the Act, and must fully disclose their economic interests. Other public officials or employees are subject to the disclosure requirements of Article 3, Chapter 7 of the Act and may have limited disclosure requirements under their agency's conflict-of-interest code.

Regulation 18701(b) defines “other public officials who manage public investments” to include:

“(1) Members of boards and commissions, including pension and retirement boards or commissions, or of committees thereof, who exercise responsibility for the management of public investments; [and]

(2) High-level officers and employees of public agencies who exercise primary responsibility for the management of public investments, such as chief or principal investment officers or chief financial managers. This category shall not include officers and employees who work under the supervision of the chief or principal investment officers or the chief financial managers...”

\* \* \*

Regulation 18701(b) also sets forth the following definitions to assist in interpreting the phrase “other public officials who manage public investments”:

“(1) ‘Public investments’ means the investment of public moneys in real estate, securities, or other economic interests for the production of revenue or other financial return.

“(2) ‘Public moneys’ means all moneys belonging to, received by, or held by, the state, or any city, county, town, district, or public agency therein, or by an officer thereof acting in his official capacity, and includes the proceeds of all bonds and other evidence of indebtedness, trust funds held by public pension and retirement systems, deferred compensation funds held for investments by public agencies, and public moneys held by a financial institution under a trust indenture to which a public agency is a party.

“(3) ‘Management of public investments’ means the following non-ministerial functions: directing the investment of public moneys; formulating or approving investment policies; approving or establishing guidelines for asset allocations; or approving investment transactions.”

Since the board of directors and certain staff members are involved in setting investment policy or making decisions concerning the investment of public funds, they are public officials who manage public investments and not designated employees under the conflict-of-interest code for the Association. This analysis holds true even if the Association opts not to amend its investment policy. The decision to place funds in the local agency investment fund constitutes an investment decision and is sufficient to deem the board members to be public officials who manage public investments. (*Rathmann* Advice Letter, No. A-95-122.)

Rather than exclude the members of the Association and staff from the provisions of the conflict-of-interest code completely, the Commission has developed the following language that it recommends be placed in the code for informational purposes.

“The following positions are NOT covered by the code because they must file under section 87200 and, therefore, are listed for informational purposes only:

(positions listed)

An individual holding one of the above listed positions may contact the Fair Political Practices Commission for assistance or written advice regarding his or her filing obligations if the individual believes that his or her position has been categorized incorrectly. The Fair Political Practices Commission makes the final determination whether a position is covered by section 87200.”

If you have any other questions regarding this matter, please contact me at (916) 322-5660.

Sincerely,

Luisa Menchaca  
General Counsel

By: Jeanette E. Turvill  
Political Reform Consultant  
Technical Assistance Division

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